

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 27, 2006

**SENATE BILL**

**No. 1359**

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**Introduced by Senator Torlakson**

February 21, 2006

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An act to amend Sections 4216, 4216.2, 4216.3, 4216.4, and 4216.7 of the Government Code, relating to excavation around subsurface installations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1359, as amended, Torlakson. Subsurface installations: excavations.

Existing law requires planned excavations near subsurface installations to be conducted in a specified manner that protects the subsurface installations from damage. Existing law requires an excavator to determine the exact location of subsurface installations using specified tools. If the excavator still cannot locate the exact position of the installation, existing law then requires the excavator to request the operator to provide specified additional information to help determine the exact location of the installation. Existing law provides that an excavator who has failed to comply with regulations, as provided, is liable for any damages unless the owner or operator has not complied with regulations, as provided.

This bill would require the excavator, if the excavation is within 10 feet of a high-priority subsurface installation, as defined, to hold an onsite meeting with the owner or operator to verify the location of the installation. This bill would allow only a qualified person to perform subsurface installation locating activities, require the best available technology to be used in locating activities, and require the operator to

maintain plans for the subsurface installations. This bill also would require the regional notification center to provide an excavator with the operator's contact information if the excavator finds a discrepancy in the field markings and the plans, require the exact location of the subsurface installation to be determined in a specified manner, and require an excavator to immediately notify the operator or the regional notification center when he or she discovers or causes damage to a subsurface installation. This bill would also provide that any operator who fails to provide the position of a subsurface installation will be liable for any resulting costs, as specified, that the excavator may encounter as a result of the discrepancy. *This bill would provide that an excavator will be liable for any resulting costs, as specified, for damages to a subsurface installation, for which the excavator provided the position of, that are caused by the excavator.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4216 of the Government Code is  
2 amended to read:  
3 4216. As used in this article the following definitions apply:  
4 (a) "Approximate location of subsurface installations" means  
5 a strip of land not more than 24 inches on either side of the  
6 exterior surface of the subsurface installation. "Approximate  
7 location" does not mean depth.  
8 (b) "Excavation" means any operation in which earth, rock, or  
9 other material in the ground is moved, removed, or otherwise  
10 displaced by means of tools, equipment, or explosives in any of  
11 the following ways: grading, trenching, digging, ditching,  
12 drilling, augering, tunneling, scraping, cable or pipe plowing and  
13 driving, or any other way.  
14 (c) Except as provided in Section 4216.8, "excavator" means  
15 any person, firm, contractor or subcontractor, owner, operator,  
16 utility, association, corporation, partnership, business trust,  
17 public agency, or other entity which, with their, or his or her,  
18 own employees or equipment performs any excavation.  
19 (d) "Emergency" means a sudden, unexpected occurrence,  
20 involving a clear and imminent danger, demanding immediate  
21 action to prevent or mitigate loss of, or damage to, life, health,

property, or essential public services. “Unexpected occurrence” includes, but is not limited to, fires, floods, earthquakes or other soil or geologic movements, riots, accidents, damage to a subsurface installation requiring immediate repair, or sabotage.

(e) “High priority subsurface installation” means petroleum pipelines, high-pressure natural gas pipelines and pressurized sewage pipelines.

(f) “Inquiry identification number” means the number that is provided by a regional notification center to every person who contacts the center pursuant to Section 4216.2. The inquiry identification number shall remain valid for not more than 28 calendar days from the date of issuance, and after that date shall require regional notification center revalidation.

(g) “Local agency” means a city, county, city and county, school district, or special district.

(h) “Operator” means any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1, an “operator” does not include an owner of real property where subsurface facilities are exclusively located if they are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.

(i) “Qualified person” means a person who has completed a training program on locating subsurface installations that is recognized by the Division of Occupational Safety and Health and the Occupational Safety and Health Standards Board.

(j) “Regional notification center” means a nonprofit association or other organization of operators of subsurface installations that provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(k) “State agency” means every state agency, department, division, bureau, board, or commission.

(l) “Subsurface installation” means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

SEC. 2. Section 4216.2 of the Government Code is amended to read:

4216.2. (a) (1) Except in an emergency, any person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days, but not more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(2) If the proposed excavation is within 10 feet of a high-priority subsurface installation, the excavator and the subsurface installation owner or operator's representative shall conduct an onsite meeting to determine any action or activity required to verify the location of that installation.

(b) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(c) The regional notification center shall provide an inquiry identification number to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. An inquiry identification number may be validated for more than 28 days when mutually agreed between the excavator and any member operator so notified that has a subsurface installation in the area of the proposed excavation; and, it may be revalidated by notification to the regional notification center by the excavator prior to the time of its expiration.

(d) A record of all notifications by excavators and operators to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to

1 guidelines for inspection as may be established by the regional  
2 notification centers.

3 (e) As used in this section, the delineation is practical when  
4 any of the following conditions exist:

5 (1) When delineating a prospective excavation site with white  
6 paint could not be misleading to those persons using affected  
7 streets and highways.

8 (2) When the delineation could not be misinterpreted as a  
9 traffic or pedestrian control.

10 (3) Where an excavator can determine the exact location of an  
11 excavation prior to the time an area has been field marked  
12 pursuant to Section 4216.3.

13 (4) Where delineation could not be construed as duplicative.

14 (f) Where an excavator makes a determination that it is not  
15 practical to delineate the area to be excavated, the excavator shall  
16 contact the regional notification center to advise the operators  
17 that the excavator shall identify the area to be excavated in  
18 another manner sufficient to enable the operator to determine the  
19 area of the excavation to be field marked pursuant to Section  
20 4216.3.

21 SEC. 3. Section 4216.3 of the Government Code is amended  
22 to read:

23 4216.3. (a) (1) Any operator of a subsurface installation who  
24 receives timely notification of any proposed excavation work in  
25 accordance with Section 4216.2 shall, within two working days  
26 of that notification, excluding weekends and holidays, or before  
27 the start of the excavation work, whichever is later, or at a later  
28 time mutually agreeable to the operator and the excavator, locate  
29 and field mark the approximate location and, if known, the  
30 number of subsurface installations that may be affected by the  
31 excavation to the extent and degree of accuracy that the  
32 information is available either in the records of the operator or as  
33 determined through the use of standard locating techniques other  
34 than excavating, otherwise advise the person who contacted the  
35 center of the location of the operator's subsurface installations  
36 that may be affected by the excavation, or advise the person that  
37 the operator does not operate any subsurface installations that  
38 would be affected by the proposed excavation.

39 (2) Only a qualified person shall perform subsurface  
40 installation locating activities.

1 (3) The best available technology shall be used to locate the  
2 subsurface installations.

3 (4) The operator of a high-priority subsurface installation shall  
4 maintain and preserve all plans for those subsurface installations  
5 that may be affected by the proposed excavation.

6 (b) Every operator of a subsurface installation who field marks  
7 the location of a subsurface installation shall make a reasonable  
8 effort to make field markings in conformance with the uniform  
9 color code of the American Public Works Association.

10 (c) If, at any time during an excavation for which there is a  
11 valid inquiry identification number, an operator's field markings  
12 are no longer reasonably visible, the excavator shall contact the  
13 appropriate regional notification center. The regional notification  
14 center shall contact any member, if known, who has a subsurface  
15 installation in the area of the excavation. Upon receiving timely  
16 notification or renotification pursuant to this subdivision, the  
17 operator shall re-locate and re-mark, within two working days,  
18 those subsurface installations that may be affected by the  
19 excavation to the extent necessary, in conformance with this  
20 section.

21 (d) The excavator shall notify the appropriate regional  
22 notification center of the failure of an operator to comply with  
23 this section. The notification shall include the inquiry  
24 identification number issued by the regional notification center.  
25 A record of all notifications received pursuant to this subdivision  
26 shall be maintained by the regional notification center for a  
27 period of not less than three years. The record shall be available  
28 for inspection pursuant to subdivision (d) of Section 4216.2.

29 SEC. 4. Section 4216.4 of the Government Code is amended  
30 to read:

31 4216.4. (a) The excavator shall determine the exact location  
32 of subsurface installations in conflict with the excavation by  
33 excavating with hand tools within the area of the approximate  
34 location of subsurface installations as determined by the field  
35 marking provided in accordance with Section 4216.3 before  
36 using any power-operated or power-driven excavating or boring  
37 equipment within the approximate location of the subsurface  
38 installation, except that power-operated or power-driven  
39 excavating or boring equipment may be used for the removal of  
40 any existing pavement if there are no subsurface installations

1 contained in the pavement. If there is an express written mutual  
2 agreement between the operator, or operators, and the excavator,  
3 the excavator may utilize vacuum excavation devices, or  
4 power-operated or power-driven excavating or boring equipment  
5 within the approximate location of a subsurface installation and  
6 to any depth.

7 (b) If the exact location of the subsurface installation cannot  
8 be determined by hand excavating in accordance with  
9 subdivision (a), the excavator shall request the operator to  
10 provide additional information to the excavator, to the extent that  
11 information is available to the operator, to enable the excavator  
12 to determine the exact location of the installation.

13 (c) If the excavator determines there is a discrepancy between  
14 field markings and what is shown on the project plans or if the  
15 excavator determines a subsurface installation has not been  
16 marked or marked in the wrong location, the regional notification  
17 center shall provide the excavator with information on how to  
18 directly contact the subsurface installation operator.

19 (d) When the excavation or boring operations approach the  
20 approximate location of a subsurface installation, the exact  
21 location of the installation shall be determined by safe and  
22 acceptable means that will prevent damage to the installation.

23 (e) An excavator discovering or causing damage to a  
24 subsurface installation shall immediately notify the installation  
25 operator or the regional notification center.

26 SEC. 5. Section 4216.7 of the Government Code is amended  
27 to read:

28 4216.7. (a) In the case where an excavator has failed to  
29 comply with the notification requirements of Section 4216.2 and  
30 the requirements of Section 4216.4, the excavator shall be liable  
31 for any claim for damages to the subsurface installation arising  
32 from the excavation, by an owner or operator who has complied  
33 with the requirements of Section 4216.1 and Section 4216.3, to  
34 the extent the damage was proximately caused by the excavator's  
35 failure to comply. This subdivision shall not affect claims  
36 including, but not limited to, third-party claims brought against  
37 the excavator by other parties for damages arising from the  
38 excavation.

39 (b) In the case where an owner or operator of a subsurface  
40 installation has failed to comply with the regional notification

center system requirements of Section 4216.1, that owner or operator shall forfeit his or her claim for damages to his or her subsurface installation arising from the excavation against an excavator who has complied with the requirements of Section 4216.2 to the extent damages were proximately caused by the owner's or operator's failure to comply. This subdivision shall not affect claims including, but not limited to, third-party claims, brought against the excavator by other parties for damages arising from the excavation.

(c) In the case where an owner or operator of a subsurface installation receives timely notification of proposed excavation work pursuant to Section 4216.2 but fails to comply with subdivision (a) of Section 4216.3, that owner or operator shall forfeit his or her claim for damages to his or her subsurface installation arising from the excavation against an excavator who has complied with the notification requirements of Section 4216.2 to the extent damages were proximately caused by the ~~owner~~ owner's or operator's failure to comply. This subdivision shall not affect claims including, but not limited to, third-party claims brought against the excavator by other parties for damages arising from the excavation.

(d) Any operator that fails to mark, locate, or otherwise provide the position and number of his or her subsurface installations that may be affected by a planned excavation or demolition shall be liable for any costs, labor, parts, equipment, and personnel downtime incurred by an excavator damaging a facility owned, operated, or controlled by the operator.

*(e) In the case where an operator marks, locates, or otherwise provides the position and number of his or her subsurface installations that may be affected by a planned excavation or demolition and an excavator damages a facility owned, operated, or controlled by the operator, the excavator shall be liable for any resulting costs, labor, parts, equipment, and personnel downtime incurred by the operator.*